



Sexual Orientation Discrimination Complaints: Frequently Asked Questions (FAQs)

1. What are the Agency's Sexual Orientation Discrimination Complaints Procedures?

[NASA's Sexual Orientation Discrimination Complaints Procedures](#) (SxO Procedures) establish an Agency administrative process created to provide an avenue of redress for discrimination complaints based on sexual orientation raised by NASA employees.¹ The procedures find their ultimate authority in [Executive Order 13087](#) of May 28, 1998, which makes it the policy of the federal government to provide equal opportunity in Federal employment regardless of sexual orientation.

2. Why did the Agency create a separate process for sexual orientation discrimination complaints?

Although Executive Order 13087 makes it a policy of the Federal government to afford equal opportunity regardless of sexual orientation, there is as yet no Federal anti-discrimination law prohibiting discrimination based on sexual orientation. While "parallel" to the equal employment opportunity (EEO) complaints process, the NASA SxO process is not exactly the same, because the same rights and protections under Title VII of the Civil Rights Act of 1964 and other Federal anti-discrimination laws were not available to Federal employees in June 2012, when the SxO process was created.

3. May I skip NASA's SxO complaints procedures and file an EEO complaint based on a claim of sexual orientation discrimination alone?

Yes. On July 15, 2015, the Equal Employment Opportunity Commission (EEOC) rendered a precedent setting decision in the case of [Baldwin v. Department of Transportation](#). In the [Baldwin](#) case, EEOC found that discrimination based on sexual orientation is covered under Title VII, as a form of sex-based discrimination. Specifically, the EEOC found that "discrimination on the basis of

¹ NASA Procedural Requirements (NPR) 3713.4, Procedures for Discrimination Complaints Based on Sexual Orientation (effective June, 1, 2012). It should be noted that some contractor employees may be deemed federal employees for purposes of the EEO or SxO processes, depending upon whether they meet certain criteria showing that NASA exercises significant control over the means and manner of their performance. This determination is made on a case-by-case basis.

sexual orientation is premised on sex-based preferences, assumptions, expectations, stereotypes, or norms,” and that “sexual orientation” as a concept cannot be defined or understood without reference to sex. As a result, the EEOC found explicitly that “sexual orientation discrimination is sex discrimination because it necessarily entails treating an employee less favorably because of the employee’s sex.”

In accordance with Baldwin, individuals who believe they have been discriminated against because of their sexual orientation have a right to have their claims processed under Title VII as sex discrimination. Although the EEOC makes clear that agencies may maintain, and employees may still utilize, separate internal agency sexual orientation procedures, such as NASA’s SxO procedures, these procedures afford fewer protections than the Title VII complaints process. Therefore, individuals with agency responsibility for counseling and advising aggrieved individuals must ensure all those having claims of discrimination based on sexual orientation are fully advised of their rights to file under Title VII.

4. How do the Agency SxO Procedures compare with the Agency’s EEO complaints process?

Under both the EEO complaints process and the SxO procedures, individuals must raise allegations of discrimination within 45 days to an EEO counselor and undergo counseling. If the issue is not resolved during the informal process, the individual is able to file a formal discrimination complaint. Alternative dispute resolution (ADR) is available at both the informal and formal stage for both processes.

Complainants filing solely under the SxO Procedures, however, do not have the right to a hearing before the U.S. Equal Employment Opportunity Commission (EEOC), or the right of appeal of an Agency decision to the EEOC.

In cases in which the Agency finds discrimination to have occurred, forms of available monetary relief are much more limited under the SxO Procedures than under the EEO complaints process. The lesser process and availability of relief under the SxO Procedures are because, as mentioned in Q&A 2 above, there is as yet no Federal law prohibiting discrimination based on sexual orientation that would provide authority for a greater level of process and monetary relief. For more details on the actual differences between the two processes see below (pp. 4-7).

5. What should I do if I believe I am being discriminated against based on my sexual orientation?

You should immediately contact your [Center EO Office](#). If your concern relates to harassment, you should also consult with your manager (or another

management official if your first-line supervisor is the alleged harasser), or the Center Anti-Harassment Coordinator (CAHC). If you do not have contact information for your CAHC, consult with your HR or EO offices.

Consultation with the Ombudsman is confidential and it does not put the Agency on notice of a complaint being filed.²

6. Are there other available avenues of relief for sexual orientation discrimination?

Yes. Rather than pursue a claim through Title VII or the Agency's SxO Procedures, a complainant may instead elect to:

- Raise a claim directly with the Office of Special Counsel (OSC), which has the authority under the Civil Service Reform Act of 1978 to protect federal employees and applicants from prohibited personnel practices, including discrimination based on personal conduct which is not job-related and does not adversely affect the on-the-job performance of a federal employee or applicant. If a complainant initially files with the OSC within 45 days of the matter alleged to be discriminatory, or in the case of a personnel action, within 45 days of the effective date of the action, and the OSC decides it does not have jurisdiction to investigate the complaint, the complainant shall be entitled to pursue the claim pursuant to these procedures. The complainant must initiate informal complaint counseling within 15 days of receipt of the OSC's denial of jurisdiction.

- File an appeal of an adverse personnel action with the Merit Systems Promotions Board (MSPB) pursuant to Federal appellate procedures. If a complainant initially files with the MSPB within 30 days of the matter alleged to be discriminatory, or in the case of a personnel action, within 30 days of the effective date of the action, and the MSPB decides it does not have jurisdiction to investigate the complaint, the complainant is entitled to pursue the claim under these procedures. The complainant shall initiate informal complaint counseling within 15 days of receipt of the MSPB's denial of jurisdiction as long as the MSPB's dismissal of the appeal was not based upon the appeal having been untimely filed.

Also, NASA employees who are not in an exclusive bargaining unit may file a grievance of discrimination based on sexual orientation under the [NASA Administrative Grievance Procedures](#). Employees who are members of an exclusive bargaining unit with a negotiated grievance procedure, depending on the terms of their collective bargaining unit agreement, maybe able to use the negotiated grievance procedure to file a grievance of discrimination based on

² See NPD 2025.1A, NASA Ombuds Program, at Sec.5(c)(3), stating: "[R]eporting information to an Ombuds does not constitute official notice to the Agency, nor does it relieve an employee of any other independent duty to report (e.g., duty to report crime to the IG)."

sexual orientation. Employees should confer with their Center labor representatives if they want to pursue this option.

Similarities Between the EEO and SxO Processes

EEO Complaint Process	NPR 3713.4 Process ³
EEO Counseling at the informal stage handled by the Center EO Office – informal complaints processed in 30 days unless an extension is obtained	EEO Counseling at the informal stage handled by the Center EO Office – informal complaints processed in 30 days unless an extension is obtained
Complainants may remain anonymous at the informal stage	Complainants may remain anonymous at the informal stage
Alternative Dispute Resolution Offered when appropriate	Alternative Dispute Resolution Offered when appropriate
Investigation of Formal Complaints by the Agency ODEO	Investigation of Formal Complaints by the Agency ODEO
Final Agency Decision from the Associate Administrator, ODEO	Final Agency Decision from the Associate Administrator, ODEO

³ All time frames are the same for both processes.

Differences Between the EEO and SxO Processes

EEO Complaint Process	NPR 3713.4 Process
Authority for this process derives from federal statutes	Authority for this process derives from Executive Order and NASA Policy
Appeals process external to Agency ODEO	No external appeals process , but request for reconsideration to Agency ODEO is available (request for reconsideration must be filed with ODEO within 30 days of ODEO's final decision.
Compensatory damages may be awarded	No compensatory damages may be awarded
Back pay and reasonable attorneys' fees may be awarded to employees and applicants	<ul style="list-style-type: none"> - Back pay may be awarded for employees in limited circumstances - Reasonable attorney fees may be awarded for employees where back pay is at issue; attorney fees for employees are not authorized in all other situations - Back pay and attorney fees may not be awarded to applicants

Summary of NASA Processes for Raising Discrimination and Related Issues and Allegations

	Audience	Authority	Office Receiving Issue(s)	NASA Office Responsible for Agency Decision	Appeal External to NASA Available
SxO Process (NPR 3713.4)	Any Center Employee⁴	NASA Policy	Center EO Office	Agency ODEO	No
EEO Complaints Process	Any Center Employee⁵	Federal Laws	Center EO Office	Agency ODEO	Yes
Anti Harassment Process	Any Center Employee⁶	NASA Policy	Center A-H Coordinator	Center Management	No
Ombuds Program	Any Center Employee & On/Near- Site	Center Director	Center Ombuds	Depends on Issue(s) Raised	No

⁴ If you are a member of a bargaining unit, you should consult your Center labor representative officer to in whether you file a negotiated grievance.

⁵ If you are a member of a bargaining unit, you should consult your Center labor representative to determine whether your negotiated grievance process provides coverage.

⁶ If you are a member of a bargaining unit, you should consult your Center labor representative officer to determine whether you can/should? file a negotiated grievance.

Contractor Employees

Administrative Grievance (NPR 3771)	Any Center Non- Bargaining Unit Employee	NASA Policy	Center HR Office	Center Management	No
Negotiated Grievance	Any Center Bargaining Unit Employee	Negotiated Contract	Management, Center HR Office	Center Management	Yes